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*JPMorgan Chase Bank, N.A.*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MICHELLE CARTER,

Plaintiff,

- against -

JPMORGAN CHASE BANK, N.A.,

Defendant.

Case No. 17-539 (AMD) (SLT)

**ANSWER TO FIRST  
AMENDED COMPLAINT**

Defendant JPMorgan Chase Bank, N.A. ("Chase") by its attorneys, Zeichner Ellman & Krause LLP, answers the First Amended Complaint, upon information and belief, as follows:

1. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 1, 4-6 and 10.

2. It denies each and every allegation contained in paragraph 2, except it is a national banking association organized under the laws of the United States of America with a main office, as set forth in its articles of association, located in the State of Ohio, with branches in New York and elsewhere.

3. It denies each and every allegation contained in paragraph 3 as being incomprehensible and, in any event, purporting to state a legal conclusion for which no response is required.

4. It denies each and every allegation contained in paragraphs 13-14, 16, 19, 24-25, 29 and 31 and refers all questions of law to the Court.

5. It denies each and every allegation contained in paragraphs 7-8, except that the referenced check was deposited to the credit of an account with Chase.

6. It denies each and every allegation contained in paragraph 9, except that the drawee bank contacted Chase with respect to the referenced check and has no knowledge or information sufficient to form a belief as to the truth of any of the allegations concerning what plaintiff allegedly learned from the drawee bank for the check at issue.

7. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 10, except denies that it negligently honored the referenced check.

8. It denies each and every allegation contained in paragraphs 11, 15, 17-18, 20-22, 26-28, 30 and 33-36.

**FIRST AFFIRMATIVE DEFENSE**

9. The First Amended Complaint fails to state a claim upon which relief can be granted against Chase.

**SECOND AFFIRMATIVE DEFENSE**

10. Chase has defenses to the causes of action alleged in the First Amended Complaint based on documentary evidence.

**THIRD AFFIRMATIVE DEFENSE**

11. The First Amended Complaint fails to state a claim upon which relief can be granted against Chase under Uniform Commercial Code ("U.C.C.") § 3-419.

**FOURTH AFFIRMATIVE DEFENSE**

12. The First Amended Complaint fails to state a claim upon which relief can be granted against Chase pursuant to General Business Law § 349.

**FIFTH AFFIRMATIVE DEFENSE**

13. The First Amended Complaint fails to state a claim upon which relief can be granted against Chase for negligence.

**SIXTH AFFIRMATIVE DEFENSE**

14. Plaintiff is precluded from maintaining this action in whole or in part by reason of U.C.C. § 3-406.

**SEVENTH AFFIRMATIVE DEFENSE**

15. Plaintiff's action is precluded, in whole or part, by U.C.C. § 4-103(5).

**EIGHTH AFFIRMATIVE DEFENSE**

16. Plaintiff's action is precluded, in whole or part, by U.C.C. § 3-403.

**NINTH AFFIRMATIVE DEFENSE**

17. Plaintiff's claims are barred by the doctrines of ratification, laches, estoppel and/or waiver.

**TENTH AFFIRMATIVE DEFENSE**

18. If plaintiff suffered any losses, they resulted from plaintiff's failure to review and exercise care, control, and/or supervision of the check that is described in the First Amended Complaint.

**ELEVENTH AFFIRMATIVE DEFENSE**

19. Plaintiff failed to implement adequate security measures to safeguard the check described in the First Amended Complaint.

**TWELFTH AFFIRMATIVE DEFENSE**

20. Any damages allegedly suffered by plaintiff were caused, in whole or in part, by superseding and/or intervening acts of others than Chase.

**THIRTEENTH AFFIRMATIVE DEFENSE**

21. If plaintiff sustained any loss due to the dishonesty or improper acts of an agent, then as between innocent parties – plaintiff and Chase – the loss should fall upon plaintiff.

**FOURTEENTH AFFIRMATIVE DEFENSE**

22. Chase is not the proximate cause of plaintiff's alleged damages.

**FIFTEENTH AFFIRMATIVE DEFENSE**

23. To the extent plaintiff has a policy of insurance covering any losses referred to in the First Amended Complaint, plaintiff is precluded from recovery of such funds from Chase.

**SIXTEENTH AFFIRMATIVE DEFENSE**

24. To the extent plaintiff has obtained or obtains restitution or other payment from anyone concerning the allegations made in the First Amended Complaint, Chase is entitled to an offset in like amount against claims made against it in this action.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

25. If the damages allegedly sustained by plaintiff occurred at the time and place and in the manner alleged in the First Amended Complaint, such damages and injuries are attributable, in whole or in part, to the plaintiff's culpable conduct, and if any damages are recoverable against Chase, the amount of such damages shall be diminished in the proportion which the culpable conduct attributable to plaintiff bears to the culpable conduct which caused the damages.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

26. Plaintiff failed to mitigate damages.

**NINETEENTH AFFIRMATIVE DEFENSE**

27. Plaintiff's action is barred by the doctrines of unclean hands and *in pari delicto*.

**TWENTIETH AFFIRMATIVE DEFENSE**

28. The First Amended Complaint fails to state a claim for attorneys' fees.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**


29. Chase reserves the right to raise additional affirmative defenses and to supplement those asserted herein in the event discovery or further investigation indicates they are warranted.

**WHEREFORE**, defendant Chase demands judgment as follows:

1. dismissing the First Amended Complaint in all respects;
2. for the costs and disbursements of this action; and
3. for such other and further relief as is just.

Dated: New York, New York  
April 21, 2017

ZEICHNER ELLMAN & KRAUSE LLP

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